

**NJ TRANSIT'S RESPONSES TO
BYTEMARK'S RULE 56.1 STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendant New Jersey Transit Corp. (“NJ Transit”) responds to Plaintiff Bytemark, Inc.’s (“Bytemark”) statement of additional material facts as follows:

NJ Transit’s Finances

37. The State of New Jersey (the “State”) is not under a legal obligation to pay New Jersey Transit Corp.’s (“NJ Transit”) debts or to reimburse NJ Transit for any judgments that it pays. N.J. Stat. Ann. § 27:25-17.

Response: Not disputed.

38. The majority of NJ Transit’s 2022 operating budget is funded by fares, commercial revenue, and the federal government. NJT Board Meeting March 14, 2022, *FY23 Governor’s Proposed Budget – Revenue* (Powers Ex. 4); Viqueira Dep. (Powers Ex. 2) at 27:11–28:4.

Response: Not disputed.

39. Nineteen percent (19%) of NJ Transit’s 2022 operating budget came from state sources. Viqueira Dep. (Powers Ex. 2) at 29:15–18; NJT Board Meeting March 14, 2022, *FY23 Governor’s Proposed Budget – Revenue* (Powers Ex. 4).

Response: Not disputed.

40. The State Operating Subsidy is the annual appropriation from the State’s budget. Viqueira Dep. (Powers Ex. 2) at 28:18–22.

Response: Disputed. The State Operating Subsidy is “part of the State’s budget.” Viqueira Dep. (Powers Ex. 2) at 28:18–22. New Jersey also provides funds to NJ Transit’s operating budget via Turnpike Funding and the Clean Energy Fund. *Id.* at 29:12–18 (“Q. And how did you come up with that? You took the State operating subsidy and the Clean Energy Fund? How did you arrive at 33 percent? A. State operating subsidy, New Jersey Turnpike funding, and the Clean Energy Fund are the three State sources of funding for purposes of the operating budget.”). The state also provides funding for NJ Transit’s capital budget. *See* FY2022 Capital Funding Appropriation (Powers Ex. 3);

Viqueira Dep. (Powers Ex. 2) at 33:14–22 (“Q. What is the ‘Transportation Trust funds’ that has been designated in this diagram? A. The ‘Transportation Trust Funds’ relates to taxes collected on gasoline sales in the State of New Jersey selected by the Transportation Trust Fund Authority, authority of the State of New Jersey, which then dedicates a portion of those funds in this fiscal year ’22, 760 million to be exact, to New Jersey Transit.”).

41. The State Operating Subsidy comes directly from the State’s budget. Viqueira Dep. (Powers Ex. 2) at 28:19.

Response: Not disputed.

42. In 2022, the “Total State Appropriation” for NJ Transit totalled \$100 million. The Governor’s FY2022 Budget (Stephenson Ex. 1) at PDF Page 437, 452.

Response: Disputed. New Jersey’s “State Operating Subsidy” to NJ Transit totaled \$100 million in 2022, but the state also provided \$760 million in contributions for capital improvements, *see* Governor’s FY2022 Budget (Stephenson Ex. 1) at PDF Page 576, as well as funding via Turnpike Funding and the Clean Energy Fund. Viqueira Dep. (Powers Ex. 2) at 29:12–18, 33:14–22; FY2022 Capital Funding Appropriation (Powers Ex. 3).

43. The State’s 2022 budget totalled \$44.83 billion. The Governor’s FY2022 Budget (Stephenson Ex. 1) at PDF Page 36.

Response: Not disputed.

44. The State Operating Subsidy made up four percent (4%) of NJ Transit’s 2022 operating budget. NJT Board Meeting March 14, 2022, *FY23 Governor’s Proposed Budget – Revenue* (Powers Ex. 4).

Response: Not disputed.

45. The State Operating Subsidy made up two tenths of a percent (0.2%) of the State’s

Budget. *See* The Governor's FY2022 Budget (Stephenson Ex. 1) at PDF Page 36, 437, 452.

Response: Not disputed.

46. Turnpike Funding is primarily generated by toll roads and rest stops. Viqueira Dep. (Powers Ex. 2) at 31:11–13.

Response: Not disputed.

47. Turnpike Funding comes from the New Jersey Turnpike Authority pursuant to a contract between the New Jersey Turnpike Authority and the State. The Governor's FY2022 Budget (Stephenson Ex. 1) at PDF Page 453.

Response: Not disputed.

48. Turnpike Funding made up twelve percent (12%) of NJ Transit's 2022 operating budget. NJT Board Meeting March 14, 2022, *FY23 Governor's Proposed Budget – Revenue* (Powers Ex. 4).

Response: Not disputed.

49. NJ Transit receives funding from the Clean Energy Fund for utility costs associated with NJ Transit operations. The Governor's FY2022 Budget (Stephenson Ex. 1) at PDF Page 453.

Response: Not disputed.

50. Funding from the Clean Energy Fund made up three percent (3%) of NJ Transit's 2022 operating budget. NJT Board Meeting March 14, 2022, *FY23 Governor's Proposed Budget – Revenue* (Powers Ex. 4).

Response: Not disputed.

51. NJ Transit is required to carry liability insurance under federal law. Viqueira Dep. (Powers Ex. 2) at 65:6–7.

Response: Not disputed.

52. NJ Transit's "Annual Financial Report For the Fiscal Years ended 2021 and 2020"

states the following:

NJ TRANSIT is a defendant in a number of lawsuits arising from claims for personal injury, property damage, breach of contract, civil rights, and personnel matters. Management believes that the ultimate resolution of these matters will not have a material adverse impact on the financial position results of operations and cash flows of NJ TRANSIT.

NJ Transit Annual Financial Report For the Fiscal Years ended 2021 and 2020 (Stephenson Ex. 2) 50.

Response: Not disputed.

53. To help meet its budget, NJ Transit has generated and can generate more revenue by increasing fares. Viqueira Dep. (Powers Ex. 2) at 55:2–19.

Response: Disputed. Fare increases require the approval of the Board and the New Jersey Governor. Viqueira Dep. (Powers Ex. 2) at 44:10–13 and 54:3–14. The Governor of New Jersey represented in 2021 that he would not authorize a fare increase. *See* Governor's Message, Feb. 23, 2021 (Stephenson Ex. 1) at PDF Page 13 ("I can stand here today and tell NJ TRANSIT's riders that, for the fourth year in a row, you will not see a fare hike. Under prior administrations, fares went up while service went down. Well, this administration is improving service and not putting the burden on the hundreds of thousands of New Jerseyans who will come back to a much improved NJ TRANSIT.").

54. To help meet its budget, NJ Transit has engaged and can engage in cost savings. Viqueira Dep. (Powers Ex. 2) at 55:2–19.

Response: Disputed. Any cost savings authorized by NJ Transit's Board require the Governor's approval via the withholding of his veto power. N.J. Stat. Ann. § 27:25–4(f).

55. In 2015, NJ Transit reduced its costs by more than \$42 million by implementing a number of internal actions including locking in fuel pricing, reducing scheduled overtime, and

implementing parts and supplies efficiencies. NJT Board Meeting July 15, 2015, *Fare and Service Adjustments Authorization* (Stephenson Ex. 3).

Response: Not disputed.

56. In 2015, NJ Transit increased its fares by nine percent (9%) on average to close a \$56 million budget gap. NJT Board Meeting July 15, 2015, *Fare and Service Adjustments Authorization* (Stephenson Ex. 3).

Response: Not disputed.

NJ Transit's Autonomy

57. Membership on NJ Transit's Board of Directors (the "Board") is a volunteer position. Viqueira Dep. (Powers Ex. 2) at 21:4–8.

Response: Not disputed.

58. Board meetings occur ten times a year. Viqueira Dep. (Powers Ex. 2) at 21:16–17.

Response: Not disputed.

59. The Board does not manage the day-to-day activities of NJ Transit. Viqueira Dep. (Powers Ex. 2) at 20:7–9.

Response: Not disputed.

60. The Board does not manage NJ Transit's financials. Viqueira Dep. (Powers Ex. 2) at 20:14–16.

Response: Not disputed.

61. The Governor of New Jersey (the "Governor") has vetoed just one Board decision in at least the past decade. Viqueira Dep. (Powers Ex. 2) at 57:15–59:6.

Response: Not disputed.

62. NJ Transit's executive management controls the day-to-day activities of NJ Transit, making both management and financial decisions. Viqueira Dep. (Powers Ex. 2) at 24:21–25:1.

Response: Not disputed.

63. NJ Transit employs over 12,000 employees. 2021 NJ Transit Annual Report (Stephenson Ex. 4) 13.

Response: Not disputed.

64. NJ Transit's executive management reports directly to NJ Transit's CEO. Viqueira Dep. (Powers Ex. 2) at 22:20–23:2.

Response: Not disputed.

65. NJ Transit's executive management is responsible for briefing the Board on pertinent issues and preparing the Board for Board meetings. Viqueira Dep. (Powers Ex. 2) at 21:18–20.

Response: Not disputed.

66. As part of a comprehensive strategic, financial, and operational assessment of NJ Transit, an independent management consulting firm found the following:

In terms of leadership structure, decision-making, and governance, NJ Transit has no strategic plan, no retention program, no knowledge management program, and no succession plans. The organization has an overly complex organizational structure matched by equally as complex business processes. The organizational culture reflects “buck passing” and siloed behaviors, low employee morale, and ill-defined roles, authorities, and accountabilities.

Comprehensive Strategic, Financial & Operational Assessment of NJ Transit October 5, 2018,
(Powers Ex. 5) 5.

Response: Not disputed.

NJ Transit's Origin Documents

67. NJ Transit is independent of any supervision or control by the Department of Transportation or by any body or officer thereof. N.J. Stat. Ann. § 27:25-4(a).

Response: Not disputed.

68. NJ Transit's origin documents grant NJ Transit a separate corporate existence. N.J. Stat. Ann. § 27:25-4(a).

Response: Not disputed.

69. NJ Transit can sue and be sued. N.J. Stat. Ann. § 27:25-5(a).

Response: Disputed to the extent it suggests NJ Transit can be sued in federal court. Otherwise not disputed.

70. NJ Transit can enter into contracts. N.J. Stat. Ann. §§ 27:25-5(r), (v).

Response: Not disputed.

71. NJ Transit can purchase, own, and sell real property, personal property, and capital stock. N.J. Stat. Ann. §§ 27:25-5(j)–(k), (u).

72. NJ Transit absorbed and replaced a balkanized system of local transportation providers. Powers Ex. 1 at PDF Page 124.

Response: Not disputed.

73. NJ Transit's "About Us" webpage states the following:

In 1980, NJ TRANSIT purchased Transport of New Jersey, the State's largest private bus company at that time. Between 1981–85, the services of several other bus companies were incorporated into NJ TRANSIT Bus Operations, Inc. A

third subsidiary, NJ TRANSIT Mercer, Inc., was established in 1984 when the agency assumed operation of bus service in the Trenton/Mercer County area. A fourth subsidiary, NJ TRANSIT Morris, Inc., was established in 2011 when the agency assumed operation of the local bus service in Morris County.

About Us, NJ Transit (Stephenson Ex. 5).

Response: Not disputed.

74. NJ Transit routinely collaborates with local transportation providers to offer services that are local in nature. Viqueira Dep. (Powers Ex. 2) at 56:8–57:6.

Response: Not disputed.

Dated: November 15, 2022

Respectfully submitted,

/s/ Ashley N. Moore

Ashley N. Moore (admitted *pro hac vice*)

amoore@mckoolsmith.com

David Sochia (admitted *pro hac vice*)

dsochia@mckoolsmith.com

Douglas A. Cawley (admitted *pro hac vice*)

dcawley@mckoolsmith.com

Jonathan Powers (admitted *pro hac vice*)

jpowers@mckoolsmith.com

McKool Smith, P.C.

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Telephone: (214) 978-4000

Facsimile: (214) 978-4044

Eliza Beeney

ebeeney@mckoolsmith.com

McKool Smith, P.C.

One Bryant Park, 47th Floor

New York, New York 10036

Telephone: (212) 402-9424

Facsimile: (212) 402-9444

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on November 15, 2022, the foregoing document was served on all counsel of record via ECF.

By: /s/ Ashley N. Moore
Ashley Moore